Drinking Water Protection Act

White Paper on Draft Regulations

Safe drinking water is a vital public health priority for all British Columbians. Public awareness of issues surrounding drinking water quality has grown considerably in recent years.

While the vast majority of British Columbians enjoy high-quality drinking water, there are many communities where improvements are clearly needed. For example, currently more than 300 communities are under boil-water advisories in B.C. A 1996 report on the state of Canada's municipal infrastructure found that British Columbia's water distribution and supply systems were, on average, the second-oldest in the country and had an average age beyond the expected life-span for such systems.

The British Columbia government is implementing a comprehensive new "source to tap" drinking water protection plan, to safeguard the health of British Columbians, and to strengthen water protection in a way that is workable and affordable.

The action plan to modernize drinking water protection in B.C. focuses on preventing and treating contamination, as well as accurately and appropriately identifying and addressing risks for communities.

Under the plan, the province established a ground water advisory board, a drinking water advisory committee and a drinking water review panel to provide expert advice on legislation, regulations and standards. Legislative changes to the *Drinking Water Protection Act* subsequently have been made, proposed regulations drafted and comprehensive ground water legislation is under development. Safeguarding the province's water supply and the health of all British Columbians, the new stronger and more effective legislation places public health as the first priority.

Legislative Changes and Regulatory Proposals
This white paper provides an overview of draft regulations proposed under the *Drinking Water Protection Act*, as well as outlines changes made to the Act in October 2002.

Drinking water is currently regulated under the *Health Act* and accompanying Safe Drinking Water Regulation. Changes to the way drinking water is governed in British Columbia are necessary to establish a comprehensive and co-ordinated framework for protecting the province's drinking water from "source to tap." One of the first steps in implementing the Drinking Water Action Plan will involve repealing the existing Safe Drinking Water Regulation under the *Health Act*, bringing the *Drinking Water Protection Act* into force and establishing new regulations under that Act.

The *Drinking Water Protection Act* and draft regulations are based on extensive consultation with stakeholders, industry and the public. A public consultation process was undertaken prior to development of the *Drinking Water Protection Act* and again when the drinking water review panel, appointed in September 2001, reviewed the Act for completeness, effectiveness and

efficiency. In addition to these two dedicated consultation processes, the Ministry of Health Planning has been actively engaged with public and industry groups and has had extensive informal input on how the province's Drinking Water Program should evolve.

The *Drinking Water Protection Act* is an existing Act, which is not currently *in force*. The new law cannot be legally brought into force until new accompanying regulations are passed, as several sections of the Act require regulations to clarify its intent.

For example, section 8 (1)(a) states that "In the case of a prescribed water supply system, the water supplier must not operate the water supply system unless the water supplier holds a valid operating permit issued in accordance with the regulations…" This section of the Act cannot be brought into effect without a regulation clarifying which systems are prescribed and how an operating permit is issued.

There are additional sections of the Act where regulations could be written to clarify the intent of the section, but are not necessary to bring the Act into force. An example of this is section 3(4) which states that "Subject to the regulations, a drinking water officer may, in writing, delegate to any person a power or duty of the drinking water officer under this or another enactment." While it is possible to write a regulation for this section, it is not necessary to do so to actually delegate such authority.

The draft regulations currently under consideration only include those necessary to bring the *Drinking Water Protection Act* into force. It is anticipated that additional regulations will be developed in the future, as required.

Outcome-Based Regulation

Compared to the current legislation governing drinking water in British Columbia, the *Drinking Water Protection Act* is a more comprehensive law, providing greater detail about how individuals affected by the law must comply. The new legislation is designed to safeguard the province's drinking water quality and safety and enable drinking water officials to respond appropriately to any potential risks to human health.

It is proposed that the accompanying regulations would focus on outcomes rather than prescriptions. This outcome-based approach allows drinking water officers greater flexibility than prescriptive regulations, and therefore enables the law to be applied in an appropriate way to a broad range of situations. A comparison of the two approaches is shown in the table below.

Prescriptive Approach	Outcome-Based Approach
From the Sanitary Regulation: **Contaminating Wells or Public Supply Forbidden** 43. No person shall bathe, wash, cleanse any wool, cloth, leather, skins or animals, or put or cause to placed any dead	From the *Drinking Water Protection Act*: **23** (1) Subject to subsection (3), a person must not (a) introduce anything or cause or allow anything to be introduced into a domestic water system, a drinking water source, a well recharge zone or an area adjacent to a drinking water source, or

animal, or part of the carcass of any dead animal, or any decayed or filthy animal or vegetable matter, in or near any stream or the tributary of any stream, well, spring, reservoir, pond or other source from which water or ice is drawn, taken or used for domestic purposes; or shall cause, permit or suffer any sewage, washing or other offensive matter from any sink, privy closet, cesspool, factory, trade's establishment, slaughter house, washhouse, tannery or other place over which he shall have control, to flow or percolate thereinto, or into any drain or pipe communicating therewith; or cause any other thing to be done whereby the water supply of any city, town, village, community or household is in any wise tainted or fouled, or rendered unfit for drinking or domestic purposes.	(b) do or cause any other thing to be done or to occur, if this will result or is likely to result in a drinking water health hazard in relation to a domestic water system. (2) Subject to subsection (3), a person must not (c) introduce anything or cause or allow anything to be introduced into a domestic water system, a drinking water source, a well recharge zone or an area adjacent to a drinking water source, or (d) do or cause any other thing to be done or to occur, if it is reasonably foreseeable that, as a result, the owner of the domestic water system would have to limit the use of the water provided by the system on the basis that there may be a risk of a drinking water health hazard.

The outcome-based approach to regulating drinking water is not new in British Columbia. The Safe Drinking Water Regulation currently contains relatively few prescriptions. The ability to inspect a water system, evaluate its needs and either issue an order or place terms and conditions on an operating permit allows an enforcement officer to prescribe requirements on a case-by-case basis. Not only does this allow the individual needs of a water supply to be addressed, it also enables the regulator and supplier to work together to ensure the most important needs are addressed first. Under this outcome-based approach, water quality is safeguarded through the specific and detailed requirements contained within water suppliers' operating permits, which are tailored by the drinking water officers to address the unique circumstances of each water supply system.

Coupling the draft outcome-focused regulations with the comprehensive *Drinking Water Protection Act* will ensure a strong law safeguards the quality of the province's drinking water while providing sufficient flexibility for the province's regulators to protect drinking water more effectively and efficiently.

How to Read this Document

Descriptions of the intent of the draft regulations are inserted in text boxes within the *Drinking Water Protection Act* at the points where they provide clarification. The text boxes include descriptions of what the draft regulations would accomplish, written in plain language rather than the actual wording of the draft regulations.

Note: The text of the *Drinking Water Protection Act* that forms the basis for this document includes:

- the entire text of the original Act;
- amendments to the Act made in October, 2002, which are highlighted; and
- additions offset in color and deletions shown in strikeout.

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DRINKING WATER PROTECTION ACT

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Part 1 -- Introductory Provisions

Definitions

1 In this Act:

"aquifer" means an aquifer as defined in the Water Act;

"assessment" means an assessment under section 18 [water source and system assessments];

"construction permit" means a permit required under section 7 [construction permits and requirements for water supply systems];

"delegate" means a person to whom authority is delegated under section 3 (4) [drinking water officer delegation];

~~"designated environment official" means a person employed in the ministry of the environment minister who is designated by that minister, by name or title, to be a designated environment official for the purpose of a provision of this Act or the regulations that is set out in the designation;~~

"domestic purposes" means the use of water for

(a) human consumption, food preparation or sanitation,

(b) household purposes not covered by paragraph (a), or

(c) other prescribed purposes;

"domestic water system" means a system by which water is provided or offered for domestic purposes, including

(a) works used to obtain intake water,

(b) equipment, works and facilities used for treatment, diversion, storage, pumping, transmission and distribution,

(c) any other equipment, works or facilities prescribed by regulation as being included,

(d) a tank truck, vehicle water tank or other prescribed means of transporting drinking water, whether or not there are any related works or facilities, and

(e) the intake water and the water in the system,

but excluding equipment, works or facilities prescribed by regulation as being excluded;

It is proposed that:

Vending machines that dispense water for an individual to bottle would be exempted from the definition of a domestic water system. These vending machines are commonly located in grocery stores or other public places served by an approved water supply system. They are subject to generic provisions of the *Health Act* which allow public health inspectors to take action if a vending machine does constitute a health hazard. Testing to date shows that these machines produce acceptable quality water when installed and maintained in accordance with manufacturers' specifications.

Structures such as dams, which are subject to regulation under the *Water Act*, would be exempted from the definition of a domestic water system. The intent is to avoid duplicating approval processes under the *Water Act* in situations where dams also constitute part of the "storage" of water under subsection (b) above. Without this

exemption, construction and operating permits would be required for any hydro dams with a separate water supplier using water impounded by the dam as the source for their water supply system. Similarly, activities on these dams or other structures, or within source waters, which are already carefully regulated under the *Water Act*, would be exempted from the *Drinking Water Protection Act*. Water supply systems serving workers at the dams would be subject to the Act. If any activities associated with a dam or other structure create a drinking water health hazard, they are still subject to the generic hazard abatement provisions of the Act.

"drill a well" has the same meaning as in the Water Act;

"drinking water" means water used or intended to be used for domestic purposes;

"drinking water health hazard" means

(a) a condition or thing in relation to drinking water that does or is likely to

(i) endanger the public health, or

(ii) prevent or hinder the prevention or suppression of disease,

(b) a prescribed condition or thing, or

(c) a prescribed condition or thing that fails to meet a prescribed standard;

"drinking water officer" means a drinking water officer under section 3 [drinking water officers];

"drinking water protection plan" means a drinking water protection plan approved by the Lieutenant Governor in Council under section 34 [approval of drinking water protection plan];

"drinking water source" means a stream, reservoir, well or aquifer from which drinking water is taken;

~~"environment minister" means the Minister of Environment, Lands and Parks;~~

"immediate reporting standard" means, in relation to a water supply system, a standard established by regulation or operating permit as an immediate reporting standard for the purposes of section 12 [notice if immediate reporting standard not met];

It is proposed that:

Tests confirming the presence of *E. coli* or fecal coliform bacteria would be subject to immediate reporting standards. Total coliform bacteria, which would also be referenced in the microbiological schedule, would not require immediate reporting. These are the same indicator bacteria currently included in the microbiological schedule of the Safe Drinking Water Regulation pursuant to the *Health Act*.

E. coli and fecal coliform bacteria are both indicators of fecal contamination of a water supply. *E. coli* is a type of fecal coliform only capable of growing and reproducing in the intestinal tract of warm-blooded animals (or under laboratory conditions). Most fecal coliforms are *E. coli*, but some are other bacteria which can grow and reproduce in the environment (including in water distribution pipes). Total coliform bacteria include fecal coliforms, but also include many other species which can grow in the environment (including in water distribution pipes).

The intent of the immediate reporting requirement is to ensure that the public receives information to take precautions as soon as possible if there is any potential risk that their drinking water contains disease-causing organisms.

In most cases immediate reporting to health officers is not difficult and currently occurs under the existing regulations. As soon as a lab believes samples contain fecal coliforms or *E. coli*, it notifies the public health inspector who then contacts the water supplier and investigates for possible sources of contamination.

Under the *Drinking Water Protection Act* it will be necessary for the lab to contact the drinking water officer, the medical health officer and the water supplier. In some cases contacting the supplier may be difficult because the owners of smaller systems are often volunteers, have other employment responsibilities or may not have reliable message systems such as e-mail, fax machines or answering machines. Contacting these people may be difficult and it is proposed the regulations require immediate notification only when water quality poses a risk to consumers.

There would also be provisions to exempt some water samples from the immediate reporting standard. This would include samples collected from source waters before the water is treated to remove or inactivate pathogens and other samples not representative of water that will be consumed, such as samples collected to test new water sources or during construction or repair work.

"intake water" means, in relation to a ~~water supply system~~ domestic water system, the water at or near the point of intake into the system;

"issuing official" means a person authorized by or under the regulations to issue a construction permit, operating permit or other permit required by or under this Act;

It is proposed that:

> The only constraint on the qualifications of issuing officials will be for purposes of issuing a construction permit. The position of public health engineer would be retained for authorizing construction, with requirements that issuing officials be professional engineers, or work under the direction of a professional engineer.
>
> Under the *Drinking Water Protection Act*, the authority of public health engineers as drinking water officers, or designates of drinking water officers, would be broader than under the Safe Drinking Water Regulation, as their role would include authority to conduct inspections and issue orders.

"laboratory" means a corporation, agency or other person engaged in conducting analyses for the purposes of this Act;

"local authority" means

(a) a local government,

(b) an improvement district or greater board, as these are defined in the Local Government Act, that is responsible for the provision of drinking water, and

(c) a local body prescribed by regulation as a local authority for the purposes of the provision in which the term appears;

"local government" means

(a) the council of a municipality,

(b) the board of a regional district, and

(c) a local trust committee under the Islands Trust Act;

"medical health officer" means ~~a medical health officer as defined in the Health Act;~~ the medical health officer, as defined in the Health Act, who has responsibility in relation to the matter;

"operating permit" means a permit under section 8 [operating permits and requirements for water supply systems];

"owner" in relation to a water supply system includes

(a) a person who is

(i) responsible for the ongoing operation of the water supply system, or

(ii) in charge of managing that operation, and

(b) if parts of the water supply system are owned by different persons, or

(ii) all or part of the system is jointly owned by different persons,

all of those persons;

"potable water" means water provided by a domestic water system that

(a) meets the standards prescribed by regulation, and

It is proposed that:

Standards prescribed for the definition of potable would be limited to detection of *E. coli*, fecal coliforms and total coliforms.

Allowable levels of these bacteria would remain as in the current Safe Drinking Water Regulation of the *Health Act*. These levels are as follows:

Where only one sample is collected in a 30-day period,

- no detectable *E. coli* or fecal coliforms per 100 mL, and
- no detectable total coliform bacteria per 100 mL.

Where more than one sample is collected in a 30-day period,

- at least 90 per cent of samples must have no detectable total coliform bacteria per 100 mL, and
- no sample may have more than 10 total coliform bacteria per 100 mL.

As discussed in the "immediate reporting standard" section above, *E. coli* and fecal coliform bacteria are good indicators that water has been contaminated by the feces of warm-blooded animals. These bacteria generally are not capable of causing human illness themselves, but their presence suggests disease-causing organisms may also be present in the water. Because of the seriousness of fecal contamination, or the failure of water treatment to deal with fecal bacteria, there is no acceptable limit for fecal indicators in drinking water.

The presence of total coliform bacteria is not as serious as the presence of *E. coli* or fecal coliform bacteria, but does indicate that water treatment or distribution system maintenance is not as effective as it should be. A water supply system should be able to maintain water in the distribution system with only very low levels of total coliform bacteria, if any at all. If a water supply exceeds the total coliform levels above, the draft regulations would require the cause of the elevated levels to be investigated and corrective measures taken.

Total coliform bacteria will grow in distribution systems and there are cases where water suppliers with very large diameter pipes with low flows (e.g., where the system also is

designed to supply irrigation water, but irrigation is not taking place) may be unable to control low levels of total coliform bacteria in a practical way throughout the entire distribution system. In these conditions, where there is no immediate drinking water health hazard, an extended timeframe to achieve compliance with the total coliform standard would be considered reasonable.

(b) is safe to drink and fit for domestic purposes without further treatment;

It is proposed that:

Because this clause gives drinking water officers authority to order remedial action to address any drinking water quality problems, physical and chemical parameters would not be prescribed in the draft regulations. In most cases chemicals affecting water quality are naturally present in some water sources, such as iron, manganese or arsenic, and are safe at low levels. Currently the health officers who administer the Safe Drinking Water Regulation reference the national guidelines and available toxicological data to assess the health effects of exposure or consumption; the draft regulations would continue this practice. Such an outcome-based approach allows drinking water officers to evaluate the health significance of water quality test results, discuss any concerns with the affected community and make decisions incorporating the values of that community.

During public consultation for *the Drinking Water Protection Act* and again when the Act was reviewed, many stakeholder agencies suggested new legislation apply mandatory standards for chemical levels, for example those chemicals included in the national guidelines. However, these guidelines are not intended to be mandatory, but rather to guide regulators. They often incorporate huge safety factors or are based on long-term exposure, and therefore are not applicable to short-term exceedances. In most cases the intent of the national guidelines on chemical parameters is to establish a benchmark at which there is essentially no risk and above which the regulator or affected community should begin to evaluate the significance of a chemical in the water. Because the *Drinking Water Protection Act* is administered by public health officials, the health impact of any chemical in a water supply is evaluated by a knowledgeable expert to determine if the water meets the criteria of being safe and fit for domestic purposes.

"prescribed water supply system" means a water supply system that is of a class prescribed by regulation or is prescribed by regulation;

It is proposed that:

Prescribing different classes of water supply systems enables certain systems to be exempted from some requirements of the Act. However, no class of prescribed water supply systems would be exempted from any provision of the regulations or Act in the draft regulations with the exceptions noted above under the definition of "domestic water system."

Future options are being considered for providing smaller waterworks operators with greater flexibility, which would allow communities served by the systems to manage the risks associated with their systems in the most cost-effective manner.

"private dwelling" means

(a) a structure that is occupied as a private residence, or

(b) if only part of a structure is occupied as a private residence, that part of the structure;

~~"Provincial drinking water coordinators" means the persons designated under section 4 [Provincial drinking water coordinators];~~

"stream" means a stream as defined in the Water Act;

"threat" means, in relation to drinking water, a condition or thing, or circumstances that may lead to a condition or thing, that may result in drinking water provided by a domestic water system not being potable water;

"water supplier" means a person who is the owner of a water supply system;

"water supply system" means a domestic water system, other than

(a) a domestic water system that serves only one single-family residence, and

(b) equipment, works or facilities prescribed by regulation as being excluded;

It is proposed that:

Machines for dispensing bottled water would be excluded from the definition of domestic water system.

Equipment, works and facilities, including reservoirs, which are licensed or permitted under the *Water Act* for conservation, power or storage purposes would be exempted from the definition of water supply system. The intent of this proposed exemption is to reduce duplication of regulation where structures such as hydro-electric dams are regulated under the *Water Act*. For further clarification of this proposed exemption, refer to the comments under the definition of "domestic water system" above.

"well" means a well as defined in the Water Act;

"well recharge zone" means the area of land from which water percolates into an aquifer and is transmitted from there into one or more wells that are used, or are intended to be used, to provide drinking water.

Relationship with other Acts

2 (1) The authority that is provided by or under this Act is in addition to and does not restrict authority provided by or under any other enactment that may be used to protect drinking water.

(2) Nothing in this Act affects the powers, duties and functions of a medical health officer under the Health Act or any other enactment.

Drinking water officers

3 (1) Unless another person is appointed under subsection (2), the drinking water officer for an area is

(a) the person appointed by the medical health officer as the drinking water officer, or

(b) if no appointment is made under paragraph (a), the medical health officer.

(2) The minister may, by order, appoint persons, by name or by title, as drinking water officers and establish the area of their jurisdiction.

(3) In determining the qualifications for appointments under subsection (2), the minister must consult with the Provincial Health Officer.

(4) Subject to the regulations, a drinking water officer may, in writing, delegate to any person a power or duty of the drinking water officer under this or another enactment.

It is proposed that:

> No regulations be enacted at this time. As a result, drinking water officers would be free to delegate authority to a wide range of professionals with appropriate skills. It is anticipated that the majority of delegates would be medical health officers, public health inspectors and public health engineers. Provisions of the Act related to source protection and planning may be delegated to qualified staff with the Ministries of Water, Land and Air Protection and Sustainable Resource Management.

~~**Provincial drinking water coordinators**~~
Guidelines and directives respecting drinking water protection

4 (1) The minister may establish
(a) guidelines that must be considered, and
(b) directives that must be followed

by drinking water officers and other officials in exercising powers and performing duties or functions under this Act and the *Health Act* in relation to drinking water.

(2) The Provincial health officer must monitor compliance of drinking water officers with guidelines and directives established under this section.

Annual drinking water protection report

4.1 (1) The Provincial health officer must prepare and deliver to the minister an annual report respecting activities under the Act for the past year.

(2) After receiving an annual report under subsection (1)

(a) the minister must promptly lay the report before the Legislative Assembly if it is in session, or

(b) if the Legislative Assembly is not in session, the minister must file the report with the Clerk of the Legislative Assembly.

Reports respecting problems related to Provincial government actions

4.2 (1) The Provincial health officer must report to the minister on any situation that

(a) in the opinion of the Provincial health officer, significantly impedes the protection of public health in relation to drinking water, and

(b) arises in relation to the actions or inactions of one or more ministries, government corporations or other agents of the government.'

(2) If the Provincial health officer makes a report under subsection (1) and the situation cannot be resolved to the satisfaction of the Provincial health officer, the minister must bring the situation to the attention of the Executive Council.

~~4 (1) Two Provincial drinking water coordinators must be designated as follows:~~

~~(a) the minister must designate one person employed in that minister's ministry as a Provincial drinking water coordinator;~~

~~(b) the environment minister must designate one person employed in that minister's ministry as a Provincial drinking water coordinator.~~

~~(2) The Provincial drinking water coordinators may, after consultation with the Provincial health officer, jointly establish~~

~~(a) guidelines that must be considered, and~~

~~(b) directives that must be followed~~

~~by drinking water officers and other officials in exercising powers and performing duties under this Act and the Health Act in relation to drinking water.~~

~~(3) The Provincial drinking water coordinators must prepare and deliver to the minister an annual report respecting the activities under this Act for the past year.~~

~~(4) After receiving an annual report under subsection (3),~~

~~(a) the minister must promptly lay the report before the Legislative Assembly if it is in session, or~~

~~(b) if the Legislative Assembly is not in session, the minister must file the report with the Clerk of the Legislative Assembly.~~

Drinking water advisory committees

5 (1) The minister may, after consultation with the Provincial health officer, establish an advisory committee to provide advice and recommendations with respect to drinking water matters referred to the committee by the minister.

(2) Without limiting subsection (1), the minister may establish an advisory committee to provide advice and recommendations respecting standards and requirements to be established under this Act.

Two committees have been established to provide advice and recommendations with respect to the *Drinking Water Protection Act*.

One is an Assistant Deputy Ministers' committee comprised of representatives from all ministries with a role in drinking water or land use management that affects drinking water. This committee provides policy direction to the Drinking Water Program and ensures all ministries are informed, at the executive level, of issues related to drinking water that may be relevant to their ministry mandates.

A second is a technical advisory committee formed to provide specific technical advice to the Minister of Health Services.

(3) A person appointed to an advisory committee

(a) must be reimbursed in accordance with the directives of Treasury Board for reasonable travelling and out of pocket expenses necessarily incurred in discharging the person's duties under this Act, and

(b) may be paid remuneration in accordance with the directives of Treasury Board, if the person is not an employee under the Public Service Act.

Part 2 -- Drinking Water Supply

Water supply systems must provide potable water

6 Subject to the regulations, a water supplier must provide, to the users served by its water supply system, drinking water from the water supply system that

(a) is potable water, and

(b) meets any additional requirements established by the regulations or by its operating permit.

It is proposed that:

The discretionary authority of drinking water officers to evaluate water quality and make system-specific requirements for treatment and operation would be preserved.

Regulations would require disinfection of any drinking water system with a ground water source that a drinking water officer believe is at risk of containing pathogens. All water supply systems with a surface water source would be disinfected routinely.

Construction permits and requirements for water supply systems

7 (1) This section applies in relation to the construction, installation, alteration or extension of

(a) a water supply system, or

(b) works, facilities or equipment that are intended to be a water supply system or part of a water supply system.

(2) Subject to the regulations, a person

(a) must not undertake activities referred to in subsection (1) unless a construction permit for this has been issued in accordance with the regulations, and

It is proposed that:

The application for a construction permit must be in a form satisfactory to the issuing official or drinking water officer.

(b) must not undertake those activities except

(i) in accordance with the regulations or the plans approved in accordance with the regulations. and

(ii) in accordance with the terms and conditions of the construction permit.

It is proposed that:

Construction permits would be issued only by a drinking water officer who is either a professional engineer or working under the direction of a professional engineer.

The requirement for a construction permit would not apply where emergency repairs are being undertaken, or where the activity referred to in section 7(1) above relates to a water supply system that is a tank truck or vehicle water tank.

Tank trucks and vehicle water tanks would require an operating permit. Drinking water officers would have authority to deny an operating permit for a tank truck or tank that is not constructed of proper materials, or is constructed in a manner where a drinking water health hazard results.

(3) In addition to any other requirements established by the regulations, a person applying for a construction permit must submit to an issuing official,

(a) in the case of a permit for the construction of a water supply system, the results of water quality analyses in accordance with the regulations, and

It is proposed that:

Drinking water officers would have authority to require any analyses they deem appropriate under subsection (3)(b).

(b) in any case, the results of any water quality analyses required by the issuing official or drinking water officer.

(4) The issuing official may refuse to issue a permit until satisfied that the applicant has identified an owner of the water supply system who is to be responsible for the ongoing operation of the system, or in charge of managing that operation, in accordance with this Act.

(4.1) An issuing official may include in a construction permit terms and conditions the official considers advisable respecting the construction, installation, alteration or extension.
(5) Terms and conditions included in a construction permit may set requirements and standards that are more stringent than those established by the regulations.

(6) A construction permit

(a) is valid for one year, unless a different period is specified in the permit,

(b) is not transferable unless the transfer is approved by an issuing official, and

(c) cannot be varied except by the issuance of a new construction permit.

It is proposed that:

Construction permits issued under the existing Safe Drinking Water Regulation would continue to be valid under the *Drinking Water Protection Act*.

Operating permits and requirements for water supply systems

It is proposed that:

This section of the Act would apply to all water supply systems.

8 (1) In the case of a prescribed water supply system, the water supplier

(a) must not operate the water supply system unless the water supplier holds a valid operating permit issued in accordance with the regulations,

It is proposed that:

The current process of attaching terms and conditions on operating permits would continue as the primary means of prescribing specific operational conditions for individual water supply systems. Terms and conditions are developed based on a health officer's or water supplier's assessment of the needs of an individual water supply system. Terms and conditions can relate to areas of waterworks system operations that are not specifically included in the Act or regulations, such as performance standards for a particular treatment system, or can expand or clarify requirements of the Act or regulation, such as the frequency of water chemistry monitoring and the specific chemicals to monitor. Terms and conditions can specify detailed requirements respecting

water quality, treatment plant performance, minimum disinfectant levels, monitoring, public reporting, distribution system maintenance and other performance standards. An example of generic terms and conditions in a current operating permit may be viewed at www.healthplanning.gov.bc.ca/protect/WaterConsult/Operating_Permit_SchA.pdf.

Drinking water officers may issue an operating permit after receiving an application from a water supplier. The application would be required to be in a form satisfactory to the drinking water officer.

Existing permits, issued under the Safe Drinking Water Regulation, would continue to be valid until surrendered, suspended or cancelled.

Operating permits would not be transferable. Where a new person takes ownership of a water supply system, an application for a new operating permit would be required. This would ensure that new owners are aware of requirements associated with the Act, regulations and their operating permit, as well as any outstanding orders against the previous owner.

(b) must comply with all terms and conditions of its operating permit, and

(c) must operate the water supply system in accordance with any applicable regulations.

It is proposed that:

The regulations described in this document would apply.

(2) An issuing official may include in an operating permit terms and conditions the official considers advisable respecting the water supply system.

(3) As examples, but without limiting the authority under this section, terms and conditions respecting the following may be included in an operating permit:

(a) treatment requirements;

(b) equipment, works, facilities and operating requirements;

(c) qualifications and training of the persons operating, maintaining or repairing the water supply system;

(d) monitoring of the drinking water source and the water in the water supply system;

(e) standards applicable to the water in the water supply system;

(f) reporting and publication of monitoring results or other information respecting the water supply system.

(4) The drinking water officer or an issuing official may change the terms and conditions of an operating permit if the officer or issuing official considers this advisable, but must first consult with the water supplier respecting the proposed changes and must consider any comments of the water supplier in response.

(5) Terms and conditions included in an operating permit under this section may set requirements and standards that are more stringent than those established by this Act or the regulations.

(6) If the drinking water officer considers that further information is necessary to determine whether

(a) the water provided by a water supply system meets the requirements of section 6 [water supply systems must provide potable water], or

(b) a water supply system meets the requirements and standards established by the regulations and its operating permit,

the drinking water officer may order the water supplier to undertake additional monitoring or testing as directed by the officer, and to report the results and make them public as directed by the officer.

Qualification standards for persons operating water supply systems

9 (1) Subject to the regulations, a person must not operate, maintain or repair a prescribed water supply system unless

(a) the person is qualified in accordance with the regulations to do this, or

(b) is doing this under the supervision of a person who is qualified in accordance with the regulations.

(2) A water supplier must ensure that subsection (1) is not contravened in relation to its water supply system.

It is proposed that:

The Environmental Operators Certification Program (EOCP) would be named as the agency to assess qualifications of operators. (Refer to http://www.eocp.org for information on the EOCP.)

Water suppliers would be required to employ operators who are certified to the appropriate level for the classification of the water supply system.

Individuals who are not currently certified would be granted sufficient time to obtain certification, including time to complete both education and hands-on experience. Individuals without certain pre-requisite, such as high school Grade 12 education or equivalent, may not be able to obtain that education within the time period allowed.

Drinking water officers would have the ability to specify different time periods depending on specific circumstances. For example, where the operational staff of a water supply system are already certified, a drinking water officer would retain the current authority of a medical health officer or public health inspector to require certification immediately on an operating permit. Conversely, if an operator requires additional time to become certified, but there is no drinking water health hazard at the time, a drinking water officer would be able to grant an extension of the certification requirement.

There would be no "grandfather" clause for certification allowing long-term, non-certified staff to continue to operate without having their qualifications evaluated by a third-party agency.

Emergency provisions would be included in the draft regulations to allow non-certified individuals to carry out emergency repairs. This would allow management, who do not qualify for certification because of their lack of on-going hands-on experience, to make repairs during strikes.

Emergency response and contingency plans

10 (1) In the case of a prescribed water supply system, the water supplier must have a written emergency response and contingency plan in accordance with the regulations, to be implemented in the event of an emergency or abnormal operational circumstances affecting its water supply system or drinking water source.

(2) The drinking water officer may order a water supplier to review and update its emergency response and contingency plan.

It is proposed that:

The existing emergency response planning requirements of the Safe Drinking Water Regulation would be retained.

The plan would be required to be made available to staff of the water supply system by the supplier.

A summary of the plan would be required to be made available to the users of the water supply system. Information that may pose a risk to the water supply system would not be included in the summary. The intent is to ensure that the people served by a water supply system have basic information about the emergency response plan, both for their own information and to help ensure that the supplier does have a plan, while restricting the release of information that could be used by vandals or terrorists to tamper with a water supply system.

Water monitoring requirements

11 (1) In the case of a prescribed water supply system, the water supplier must

(a) monitor its drinking water source, the water in its system and the water it provides for the parameters, and at the frequency, established by the regulations and by its operating permit,

It is proposed that:

The frequency of testing established in the Guidelines for Canadian Drinking Water Quality would be adopted as a default for microbiological indicators. Provisions would exist for drinking water officers to establish different frequencies of monitoring based on an assessment of a particular water supply system.

No fixed frequency would be established for monitoring chemical parameters. Drinking water officers would continue to require chemical monitoring at a frequency appropriate to the specific water supply system.

(b) have the sampling required for that monitoring carried out in accordance with the regulations and the directions of the drinking water officer, and

(c) have the analyses required for that monitoring carried out in accordance with the regulations, through laboratories that meet the requirements established by the regulations and by individuals who are qualified in accordance with the regulations.

It is proposed that:

Laboratories conducting tests for the bacteriological indicators would continue to require approval in writing by the provincial health officer. This approval would require inspection of the laboratories and on-going performance monitoring.

Provisions would be made to empower drinking water officers to specify transportation procedures for samples.

(2) The laboratory conducting monitoring analyses under this section must report the results in accordance with the regulations to the drinking water officer and, subject to the regulations, to the water supplier.

It is proposed that:

Discretion on reporting requirements would remain with the drinking water officer, with the exception of *E. coli* and fecal coliform bacteria, which would be subject to immediate reporting standards for the purpose of section 12 of the Act.

The approval process established by the provincial health officer may be used as a mechanism to administer consistent reporting requirements for microbiological data.

(3) A water supplier must ensure that a laboratory conducting monitoring analyses under this section is aware of the applicable standards and requirements established by the regulations and the operating permit for the water supply system.

Notice if immediate reporting standard not met

12 (1) If a monitored parameter in relation to a water supply system fails to meet an established immediate reporting standard for that system, the laboratory conducting the analysis must immediately give notice to

(a) the water supplier,

(b) the drinking water officer, and

(c) the medical health officer.

It is proposed that:

The immediate reporting standard would apply whenever fecal coliform bacteria or *E coli* is detected in a water sample. It is intended that a supplier would monitor for either fecal coliforms or *E. coli*, rather than both.

Immediate reporting is intended to facilitate rapid response to any indicators of a drinking water health hazard but, for smaller systems in particular, it imposes a significant burden on both laboratories and drinking water officers. To reduce this burden, it is proposed that there would be an exemption from immediate reporting requirements where the results are not expected to pose a drinking water health hazard. This would allow labs to follow routine reporting procedure when the positive sample comes from a raw water sample where the water would be subsequently treated, from construction sites where water isn't actually being provided to consumers or possibly where there is a boil advisory in place and people have already been advised that the water is not suitable for consumption.

(2) In addition, a water supplier who receives notice under subsection (1) must give immediate notice to the drinking water officer advising that the water supplier has been notified by the laboratory as required by this section.

(3) For the purposes of this section, the person giving the immediate notice must

(a) take all reasonable steps to give this notice by speaking directly to or by telephone with

(i) each person required to be notified,

(ii) a person designated for this purpose by the person required to be notified, or

(iii) a person answering the telephone number designated for this purpose by the person required to be notified, and

(b) follow with notice in writing to each person within 24 hours.

Water supplier must report threats to drinking water

13 (1) In addition to the requirements under section 12, a water supplier must immediately notify the drinking water officer if the supplier considers there is a threat that is likely to result in the drinking water provided by its water supply system not meeting the requirements of section 6 [water supply systems must provide potable water].

(2) Notice required by subsection (1) must be given in accordance with section 12 (3).

Public notice of threats to drinking water

14 (1) The drinking water officer may request or order a water supplier to give public notice in a manner approved by the drinking water officer, or in accordance with the directions of the drinking water officer, if

(a) the drinking water officer has received a report under section 12 [notice if immediate reporting standard not met],

(b) the drinking water officer has received a report under section 13 [water supplier must report threats], or

(c) the drinking water officer considers that there is, was or may be a threat to the drinking water provided by a water supply system.

(2) In addition to any requirement under subsection (1), if a water supplier

(a) has received a report under section 12 or considers that there may otherwise be a drinking water health hazard in relation to its water supply system, and

(b) is not able to immediately notify the drinking water officer,

the water supplier must immediately give notice of the possible hazard to the users of drinking water from that water supply system.

It is proposed that:

> In addition to the requirement that a water supplier notify users of threats to water quality, there would be a requirement that owners of public premises provide notification to the public, or to their customers if they may consume water from a tap. The intent is to ensure visitors to a community receive the proper precautionary advice when they stop at restaurants, rest stops, motels or similar locations.

Publication of other information

15 A water supplier must ensure that the following information is made public in accordance with the regulations and any requirements of the drinking water officer:

(a) the water supplier's emergency response and contingency plan;

It is proposed that:

Water suppliers would be required to ensure their staff have access to the emergency response and contingency plan and that a summary of the plan is available to the public.

Restrictions would be placed on the published summary to ensure information is not released that could lead to a drinking water health hazard (e.g. information that would aid vandals or terrorists).

(b) the results of the monitoring required by the regulations, its operating permit or the drinking water officer, subject to any applicable time limits established by the regulations;

It is proposed that:

Water suppliers would be required to publish any information required under this section on an annual basis.

The Ministry of Health Planning is currently working with other government ministries, health authorities and the British Columbia Centre for Disease Control to develop data collection and reporting systems. It is anticipated that Web-based reports will be available for all of the province's water supplies within a few years. Many of the larger water suppliers already report on their water quality on the Internet and several health authorities have Internet sites that include reports on their drinking water monitoring programs.

(c) if applicable, its current assessment under section 18 [water source and system assessments];

(d) if applicable, its current plan under section 22 [assessment response plans];

(e) other information required to be made public by the regulations, its operating permit or the drinking water officer.

Floodproofing required for drinking water and other wells

16 (1) If required by regulation, the owner or operator of a well that provides drinking water must floodproof the well in accordance with the regulations.

(2) For the purpose of protecting the drinking water provided by a well that is subject to a requirement under subsection (1), the drinking water officer may, by order,

(a) require the owner or operator of another well that the drinking water officer has reason to believe

(i) is in the same well recharge zone, or

(ii) may otherwise affect the drinking water well

to floodproof the other well in accordance with the regulations, or

(b) if the drinking water officer is not reasonably able to determine who is the owner or operator of the other well, require the owner of the land on which that well is located to floodproof that well in accordance with the regulations.

It is proposed that:

All wells identified in the assessment as being at risk from flooding would need to be floodproofed.

It is anticipated that the ground water regulations being developed under the *Water Act* will contain detailed information on floodproofing. Therefore this information would not be replicated under the *Drinking Water Protection Act*.

Water supply systems with multiple owners

17 (1) If a water supply system is owned by 2 or more persons, or parts of the water supply system are owned by different persons, the drinking water officer may require those persons

(a) to designate one of their number for the purposes of receiving and providing information and records as required or authorized by or under this Act, and

(b) to provide to the drinking water officer the person's name, address and other contact information as required by the drinking water officer.

(2) If subsection (1) applies and the owners do not make the required designation, the drinking water officer may designate one of the owners for the purposes of this section.

Part 3 -- Water System Assessments and Plans

Water source and system assessments

18 (1) A water supplier must prepare an assessment in accordance with this Part if required by the regulations or ordered by the drinking water officer.

(2) The purpose of an assessment is to identify, inventory and assess

(a) the drinking water source for the water supply system, including land use and other activities and conditions that may affect that source,

(b) the water supply system, including treatment and operation,

(c) monitoring requirements for the drinking water source and water supply system, and

(d) threats to drinking water that is provided by the system.

Drinking water officer authority in relation to assessments

19 (1) In addition to any requirement established by regulation, the drinking water officer may order a water supplier to prepare an assessment if

(a) the drinking water officer has reason to believe that an assessment is necessary to properly identify and assess threats to drinking water in relation to the water supply system, or

(b) more than the prescribed number of years have passed since the previous assessment.

(2) In addition to any requirement established by regulation or by order under subsection (1), if

(a) more than one water supplier uses the same drinking water source or related drinking water sources, and

(b) at least one of the water suppliers is required to prepare an assessment, by regulation or by order under subsection (1),

the drinking water officer may order 2 or more of those water suppliers to prepare a joint assessment, regardless of whether the water suppliers are otherwise required to prepare an assessment.

(3) Despite any other provision of this Act or the regulations, a drinking water officer may

(a) postpone the time for beginning an assessment,

(b) extend the time for completing an assessment, or

(c) in the case of an assessment that has been ordered by the drinking water officer, limit or expand the scope of the assessment from that otherwise required under the regulations.

Assessment process

20 (1) The process, preparation, form, content, area of coverage and time for completing an assessment must be in accordance with any applicable regulations and the directions of the drinking water officer.

~~(2) In determining what directions to give for the purposes of subsection (1), the drinking water officer must consult with the medical health officer and the designated environment official.~~
(2) In determining the directions to give for the purposes of subsection (1), the drinking water officer must consult with the medical health officer.

(3) In addition, the drinking water officer may establish a technical advisory committee for the purposes of

(a) providing advice respecting directions to be given under subsection (1), and

(b) reviewing the draft assessment before it is filed under subsection (4).

(4) On completion, the water supplier must file the assessment with the drinking water officer.

Public notice

21 (1) A water supplier that is required to prepare an assessment must give advance public notice that the assessment is being prepared, with the notice to be given in accordance with the **regulations** [Helen – do we need a regulatory statement here?]and any directions of the drinking water officer.

It is proposed that:
Drinking water officers would provide direction on the manner in which public notice must be made.

(2) After the assessment has been filed under section 20 (4) [assessment process], the water supplier must make the assessment public in accordance with section 15 [publication of other information].

Assessment response plans

22 (1) In addition to any changes to the terms and conditions of an operating permit made in response to an assessment, the drinking water officer may order the water supplier to prepare an assessment response plan if

(a) an assessment has identified threats to the drinking water provided by the water supply system, and

(b) the water supply system is of a prescribed class.

It is proposed that:

This section would apply to all water supply systems.

(2) The purpose of an assessment response plan is to identify the measures that may reasonably be taken in order to address identified threats to the drinking water that is provided by the water supply system.

(3) An assessment response plan must be prepared in accordance with the regulations and the directions of the drinking water officer.

It is proposed that:

Assessment response plans would be required to include provisions to identify, correct and prevent cross-connections with non-potable water sources.

(4) As examples of provisions that may be included in an assessment response plan, but without limiting the issues that may be addressed, the drinking water officer may require a plan to include provisions respecting any or all of the following:

(a) public education and other means of encouraging drinking water source protection;

(b) guides to best management and conservation practices;

(c) infrastructure improvements;

(d) cooperative planning and voluntary programs;

(e) input respecting local authority zoning and other land use regulation.

(5) The drinking water officer may order a water supplier to review and revise its assessment response plan in accordance with the directions of the drinking water officer.

Part 4 -- Drinking Water Protection

Prohibition against contaminating drinking water or tampering with system

23 (1) Subject to subsection (3), a person must not

(a) introduce anything or cause or allow anything to be introduced into a domestic water system, a drinking water source, a well recharge zone or an area adjacent to a drinking water source, or

(b) do or cause any other thing to be done or to occur,

if this will result or is likely to result in a drinking water health hazard in relation to a domestic water system.

(2) Subject to subsection (3), a person must not

(a) destroy, damage or tamper with any part of a domestic water system,

(b) open or close any part of a domestic water system,

(c) introduce anything or cause or allow anything to be introduced into a domestic water system, a drinking water source, a well recharge zone or an area adjacent to a drinking water source, or

(d) do or cause any other thing to be done or to occur,

if it is reasonably foreseeable that, as a result, the owner of the domestic water system would have to limit the use of the water provided by the system on the basis that there may be a risk of a drinking water health hazard.

(3) The prohibitions in subsection (1) and (2) do not apply

(a) in relation to anything required for the proper operation, maintenance or repair of a domestic water system or the treatment of water in the system,

(b) if the introduction or activity is authorized or required by or under an enactment or the person is otherwise acting with lawful authority, or

(c) in relation to an activity prescribed by regulation that is undertaken in accordance with any conditions prescribed by regulation.

(4) For the purposes of prosecuting a contravention of subsection (1) (a), it is not necessary to prove that the thing, if diluted at or subsequent to the point at which it was introduced, continued to result in or be likely to result in a drinking water health hazard.

Requirement to report threats to drinking water

24 (1) If a person

(a) is required to report under section 55 (2) [reporting of toxic spills] of the Health Act or section 12 (5) [spill reporting] of the Waste Management Act, and

(b) considers that the event reported may result in a threat to drinking water,

the person must also promptly report the situation to the drinking water officer.

(2) Despite any other enactment, if a regulation designates

(a) persons employed in the public service of the Province, or

(b) officials acting under the authority of a specified enactment

for the purposes of this section, by title or otherwise, those designated must report to the drinking water officer any situation they observe, or of which they become aware, that they consider may be a threat to drinking water.

Hazard abatement and prevention orders

25 (1) A drinking water officer may make an order under this section if the drinking water officer has reason to believe that

(a) a drinking water health hazard exists, or

(b) there is a significant risk of an imminent drinking water health hazard.

(2) An order under this section may be directed to

(a) a person whose action or omission, in the opinion of the drinking water officer, resulted in or significantly contributed to the drinking water health hazard or risk, or

(b) a person who had possession, charge or control of a condition or thing that, in the opinion of the drinking water officer, caused or significantly contributed to the drinking water health hazard or risk.

(3) The order must be served on the person to whom it is directed and may require that person, at the person's own expense, to do one or more of the following:

(a) provide to the drinking water officer information, as requested by the drinking water officer, relating to the conditions or things that resulted in or contributed to the drinking water health hazard or risk;

(b) undertake investigations, tests, surveys and any other action the drinking water officer considers necessary to assess and determine how to address or prevent the drinking water health hazard, and report the results to the officer;

(c) abate the drinking water health hazard;

(d) acquire, construct or carry out any works or do or cease to do any other thing, if this is reasonably necessary to control, abate, stop, remedy or prevent the drinking water health hazard;

(e) adjust, repair or alter any works to the extent reasonably necessary to control, abate, stop or prevent the drinking water health hazard;

(f) give public notice in a manner approved by the drinking water officer or in accordance with the directions of the drinking water officer;

(g) prepare and implement a hazard remediation plan or hazard prevention plan acceptable to the drinking water officer.

(4) If the order is directed to a person who is not the registered owner of the property on which action is required to be taken under subsection (3) (c), (d) or (e), a copy of the order must also be served on the registered owner.

(5) An order under this section may authorize persons designated by the drinking water officer to enter on or into property for the purpose of controlling, abating, stopping, remedying or preventing the drinking water health hazard.

(6) As restrictions on subsection (5),

(a) except in the case of an emergency, a person authorized under that subsection must take reasonable steps to notify the owner or occupier before entering the property, and

(b) the authority must not be used to enter a private dwelling except with the consent of the occupant or as authorized by a warrant under this or another Act.

(7) If the drinking water officer considers that the situation is urgent, the officer may issue an order under this section orally, in which case the officer must serve a written version of the order in accordance with this section as soon as reasonably possible.

(8) A drinking water officer may amend or cancel an order made under this section.

(9) The authority to make an order under this section, and to take action in relation to the order under section 27 [action in default], applies despite any other enactment, and the order applies despite any other enactment or authorization under an enactment.

(10) In the event of a conflict between an order under this section and an order of a medical health officer under section 63 [orders respecting hazards and non-compliance] of the Health Act, the order of the medical health officer prevails.

Orders respecting contraventions

26 (1) If a drinking water officer has reason to believe that a person is in contravention of this Act or the regulations, the drinking water officer may make an order under this section directed at the person.

(2) An order under this section must be served on the person to whom it is directed and must set out the reasons why it was made, what the person is required to do and the time within which this must be done.

(3) As examples of provisions that may be included in an order under this section, but without limiting the authority of a drinking water officer under subsection (1), an order may include provisions for the following:

(a) requiring the person to provide information respecting an activity;

(b) requiring the person to take specified actions to comply with the Act or the regulations;

(c) prohibiting the person from starting or continuing specified actions until compliance is achieved;

(d) requiring the closure of all or part of a domestic water system;

(e) requiring public notice to be given in a manner approved by the drinking water officer or in accordance with the directions of the drinking water officer;

(f) requiring the person to remedy, in accordance with the directions of the drinking water officer, circumstances arising from the contravention that may cause or contribute to a drinking water health hazard;

(g) prohibiting a water supplier from providing water, or from using a specified drinking water source or fill location, until compliance has been achieved.

(4) Section 25 (4) to (10) [hazard abatement and prevention orders] applies to an order under this section.

Action in default

27 (1) If a drinking water officer makes an order under section 25 [hazard abatement and prevention orders] or 26 [orders respecting contraventions], the drinking water officer may

(a) direct that, if the person fails to take the action required by the order, the action is to be done at the expense of that person, with the costs and expenses incurred recoverable under this section, and

(b) enter or authorize other persons to enter on or into any property for the purpose of

(i) determining whether the order is being complied with, or

(ii) taking action in default under paragraph (a).

(2) As restrictions on subsection (1),

(a) except in the case of an emergency, before taking action under that subsection, the drinking water officer must give notice to the person subject to the order, and

(b) section 25 (6) [restrictions on entry] applies.

(3) All reasonable costs and expenses incurred in taking action in default under this section are deemed to be money paid for the use and at the request of the person to whom the order was directed, and may be recovered in any court of competent jurisdiction by the person who incurred those costs and expenses as a debt owed to that person.

(4) In addition to recovery under subsection (3), in the case of recovery against a property owner or an occupier of property who is subject to property taxation under the Local Government Act, Vancouver Charter or Taxation (Rural Area) Act, the costs and expenses may be recovered in accordance with section 74 (3) and (4) [recovery of costs and expenses] of the Health Act, with the required certificate to be filed by the drinking water officer.

Direct action by drinking water officer

28 (1) Despite any other provision of this Act, if a drinking water officer

(a) has reason to believe that a drinking water health hazard exists or that there is a significant risk of an imminent drinking water health hazard, and

(b) is not aware of a person against whom an order under section 25 [hazard abatement and prevention orders] or 26 [orders respecting contraventions] may appropriately be made,

the drinking water officer may take any actions the drinking water officer considers necessary to address the health hazard or risk or may authorize a water supplier or other person to do this.

(2) For the purposes of this section, the drinking water officer may authorize any persons designated by the drinking water officer to enter on or into property and take the necessary actions.

(3) As restrictions on subsection (2), section 25 (6) [restrictions on entry] applies.

(4) If

(a) action is taken under this section, and

(b) the drinking water officer afterwards determines that there was a person against whom an order referred to in subsection (1) could have been made,

the drinking water officer may, by order, require the person to pay all or some of the reasonable costs and expenses incurred in taking action.

(5) Section 27 (3) and (4) [action in default -- cost recovery] applies in relation to an order under subsection (4) of this section.

Request for investigation

29 (1) If a person considers that there is a threat to their drinking water, the person may request the drinking water officer to investigate the matter.

(2) A request under subsection (1) must be in writing and must include specifics of the facts that the person considers constitute the threat.

(3) On receiving a request under subsection (1), the drinking water officer must review the request and consider whether an investigation is warranted.

(4) As applicable,

(a) if the drinking water officer decides against undertaking an investigation, the officer must advise the requesting person of this, and

(b) if the drinking water officer undertakes an investigation, the drinking water officer must advise the requesting person of the results of the investigation.

Required consultations respecting drinking water

30 (1) The Lieutenant Governor in Council may make regulations

(a) prescribing enactments for the purposes of this section, and

(b) prescribing that all or specified classes of decisions under a prescribed enactment may be made subject to this section.

(2) If a regulation under subsection (1) applies to an area, the minister may, by regulation applicable to all or part of that area,

(a) provide that all or specified classes of the prescribed decisions are subject to this section,

(b) identify local authorities, drinking water officers and water suppliers who must be

(i) provided an opportunity to comment on proposed decisions that are subject to this section, and

(ii) advised as to the decisions when they have been made, and

(c) specify whether persons identified under paragraph (b) may require a written response under subsection (6).

(3) Before making a regulation under subsection (2), the minister must consult with the minister responsible for the enactment in relation to which the regulation is intended to be made.

(4) Before making a decision that is subject to this section, the decision maker

(a) must provide the identified persons with an opportunity to comment on the proposed decision, and

(b) may, in relation to this, specify a time by which any comments the persons wish to make must be received by the decision maker in order to be considered.

(5) If a decision is to be made at the request of a person, by application or otherwise,

(a) the decision maker may satisfy the requirement of subsection (4) by requiring the requesting person to obtain comments for the purpose of this section and report them to the decision maker, or

(b) if no requirement is made under paragraph (a), the decision maker must provide a copy of any comments under this section to the requesting person.

(6) Despite any other enactment, a person making a decision that is subject to this section must,

(a) in making the decision, consider the comments provided under this section in relation to drinking water, and

(b) if requested by a person specified under subsection (2) (c), provide a written response respecting the decision maker's consideration of the person's comments in making the decision.

(7) Failure to provide an opportunity to comment in accordance with this section does not of itself render a decision invalid.

Part 5 -- Drinking Water Protection Plans

Order designating area for planning process

~~31 (1) The minister may, by order made after consultation with the environment minister, designate an area for the purpose of developing a drinking water protection plan for the area if the minister considers that a plan will assist in addressing or preventing threats to drinking water.~~

~~(2) The minister must consider whether to make an order under subsection (1) if requested by a drinking water officer, a local authority or a water supplier.~~

31(1) The Minister may, by order made on the recommendation of the Provincial health officer, designate an area for the purpose of developing a drinking water protection plan for the area.

(2) The Provincial health officer may only recommend that an order be made under this section if

(a) based on monitoring or assessment results, the Provincial health officer is satisfied that a drinking water protection plan will assist in addressing or preventing a threat to drinking water that the Provincial health officer considers may result in a drinking water health hazard, and

(b) no other practicable measures available under this Act are sufficient to address or prevent the drinking water health hazard.

(3) The Provincial health officer must consider whether to make a recommendation under this section if requested by a drinking water officer.

(4) A local authority or water supplier may request a drinking water officer to make a request under subsection (3).

Plan development process

32 (1) The minister may, by order, establish the process by which a proposed drinking water protection plan for a designated area is to be developed~~(1) The minister may, by order made after consultation with the environment minister, establish the process by which a proposed drinking water protection plan for a designated area is to be developed.~~

(2) Without limiting subsection (1), an order under that subsection may

(a) establish who is to be responsible for preparing the proposed plan,

(b) establish the terms of reference for the plan, or authorize the preparation of some or all of the terms of reference subject to approval by the minister, and

(c) require the establishment of a technical advisory committee in relation to development of the plan.

(3) The terms of reference for a proposed drinking water protection plan must include

(a) the purpose of the plan,

(b) the issues to be addressed in the plan,

(c) a process for public and stakeholder consultation, and

(d) a time limit for completing the plan.

(4) As examples of terms of reference that may be established for a plan, but without limiting the issues that may be addressed, the terms of reference for a drinking water protection plan may include one or more of the following:

(a) whether changes are required to a water supply system, including measures respecting its water source, intake, treatment, storage, transmission and distribution;

(b) whether the operating permit for a water supply system should include additional provisions respecting monitoring, standards or other requirements;

(c) consideration of the economic and social costs and benefits of addressing risks through treatment, source protection or other means;

(d) whether an implementation regulation under any of sections 35 to 38 should be made.

(5) In preparing a proposed drinking water protection plan, consideration must be given to the results or progress of Provincial government or local government strategic, operational and land use or water use planning processes within the designated area.

(6) A proposed drinking water protection plan may be prepared in conjunction with a proposed water management plan under Part 4 [Water Management Plans] of the Water Act.

(7) The minister may, by order, extend the time for completing a proposed drinking water protection plan whether or not the time previously set has expired.

Drinking water officer authority

33 (1) For the purposes of developing a proposed drinking water protection plan, the drinking water officer may do one or more of the following:

(a) order a water supplier to participate in the process;

(b) undertake investigations, tests and surveys that the drinking water officer considers advisable;

(c) authorize persons to undertake investigations, tests and surveys referred to in paragraph (b).

(2) The drinking water officer or any person authorized under subsection (1) (c) may exercise any of the powers under section 40 [inspection authority] for the purposes of investigations, tests and surveys under subsection (1).

Approval of drinking water protection plan

~~34 (1) After a proposed plan has been prepared, it must be submitted to the minister, who must refer it to the Provincial drinking water coordinators for review.~~

~~(2) After the review required by subsection (1), the minister must place the proposed plan and the comments of the Provincial drinking water coordinators before the Lieutenant Governor in Council, who may approve all or part of the proposed plan as a drinking water protection plan.~~

~~(3) If a drinking water protection plan is approved by the Lieutenant Governor in Council, the minister must arrange for the plan to be made public.~~

34 (1) After a proposed plan has been prepared, it must be submitted to the minister, who must refer it to the Provincial health officer for review.

(2) After the review required by subsection (1), the minister must place the proposed plan and the comments of the Provincial health officer before the Lieutenant Governor in Council, who may approve all or part of the proposed plan as a drinking water protection plan.

(3) If a drinking water protection plan is approved under subsection (2), the minister must arrange for the plan to be made public.

Implementing a plan: effect on statutory decisions

35 (1) For the purposes of implementing a drinking water protection plan, the Lieutenant Governor in Council may, by regulation applicable in relation to all or part of the designated area for the plan, do one or more of the following:

(a) require that persons making decisions or classes of decisions under a specified enactment must consider the plan in making those decisions;

(b) restrict the issuance or amendment of licences, approvals, permits or other authorizations under a specified enactment;

(c) restrict the exercise of a power under a specified enactment;

(d) provide that specified provisions of the plan are a higher level plan for the purposes of the Forest Practices Code of British Columbia Act.

(2) Despite an enactment specified under subsection (1), a regulation under subsection (1) (b) may establish requirements that must be imposed in issuing or amending a licence, approval, permit or other authorization under an enactment.

(3) Requirements imposed under subsection (2) are deemed to be imposed under the enactment under which the authorization is issued or amended.

(4) The issuance or amendment of a licence, approval, permit or other authorization contrary to a regulation under subsection (1) (b), or the exercise of a power contrary to a regulation under subsection (1) (c), has no effect.

Implementing a plan: relationship with other planning processes

35.1 (1) For the purposes of implementing a drinking water protection plan, the Lieutenant Governor in Council may, by regulation, do one or more of the following:

(a) require that other specified Provincial government or local authority strategic or operational planning processes, or classes of such processes, consider the drinking water protection plan;

(b) require that the results of specified Provincial government or local authority strategic or operational planning processes, or classes of such processes, be consistent with the drinking water protection plan;

(c) provide that specified Provincial government or local authority strategic or operational plans, bylaws or other planning documents, or classes of such plans, bylaws or other documents, do not have legal effect to the extent of any inconsistency with the drinking water protection plan.

(2) A provision under subsection (1)(c) applies despite any other enactment.

Implementing a plan: restrictions on well drilling

36 (1) For the purposes of implementing a drinking water protection plan, the Lieutenant Governor in Council may, by regulation applicable to all or part of the designated area for the plan, restrict or prohibit one or more of the following:

(a) the drilling of wells;

(b) the alteration of wells;

(c) the installation of well pumps;

(d) the conduct of flow tests.

(2) In relation to a regulation under subsection (1), the Lieutenant Governor in Council may, by regulation, do one or more of the following:

(a) prescribe exemptions from a requirement for a drilling authorization under section 81 [drilling authorizations] of the Water Act;

(b) prescribe requirements for the giving of notice respecting an application for a drilling authorization;

(c) prescribe classes of persons who may appeal a decision respecting such an application under section 92 [appeals to Environmental Appeal Board] of the Water Act.

Implementing a plan: enforcement of water source standards

37 (1) For the purposes of implementing a drinking water protection plan, the Lieutenant Governor in Council may, by regulation,

(a) prescribe all or part of a drinking water source,

(b) establish water quality standards in relation to the prescribed drinking water source or part of a drinking water source,

(c) prohibit persons from doing anything that results in the prescribed standards not being met, and

(d) establish exceptions to a prohibition under paragraph (c).

(2) A prohibition under subsection (1) applies despite any other enactment or authorization under an enactment.

Implementing a plan: local government authority

38 (1) If requested by a local government for the purposes of implementing a drinking water protection plan, the Lieutenant Governor in Council may, by regulation applicable to all or part of the designated area for the plan,

(a) provide that

(i) the issuance or amendment of licences, approvals, permits or other authorizations under a specified enactment, or

(ii) the exercise of a power under a specified enactment,

is subject to this section, and

(b) despite an enactment specified under paragraph (a) but subject to subsection (2), authorize the local government to

(i) establish terms and conditions that must be included in an authorization under a specified enactment, or

(ii) restrict the exercise of a specified power under an enactment,

subject to any limits or conditions established by the regulation.

(2) A local government may only exercise an authority under subsection (1)

(a) after consultation with the relevant decision maker and the drinking water officer, if this consultation is required by regulation, and

(b) in each case, if the local government has reason to believe this is necessary for the purpose of protecting the potability of drinking water.

(3) Terms and conditions established under this section are deemed to be imposed under the specified enactment to which they relate.

(4) For the purposes of undertaking work specifically contemplated by a drinking water protection plan, the minister responsible for the Local Government Act may, by order, exempt a local government from the requirement for a counter petition opportunity, elector assent or other elector approval under the Local Government Act, the Vancouver Charter or another enactment, subject to any conditions established by the minister.

Review and amendment of plans

~~39 The minister may, by order after consultation with the environment minister, direct that a current drinking water protection plan be reviewed to determine whether amendments should be made, and this Part applies to the review and to any amendment to the plan proposed by the review.~~

39 The minister may, by order made on the recommendation of the Provincial health officer, direct that a current drinking water protection plan be reviewed to determine whether amendments should be made, and this Part applies to the review and to any amendment to the plan proposed by the review.

Part 6 -- General

Reconsiderations and review of drinking water officer decisions

39.1 (1) In this section "decision" means a decision of a drinking water officer under any of the following:

(a) section 19 (drinking water officer authority in relation to assessments)
(b) section 25 (hazard abatement and prevention orders)
(c) section 26 (orders respecting contraventions)
(d) section 31 (4) (request respecting plan initiation)

(e) a decision resulting from a reconsideration under subsection (3) of this section.

(2) Subject to the regulations, a person affected by a decision may

(a) request a reconsideration of the decision under subsection (3), if the person considers that there is sufficient new evidence for this purpose, or

(b) request a review of the decision under subsection (4).

(3) If a reconsideration is requested and the drinking water officer is satisfied that there is sufficient new evidence respecting the matter to justify a reconsideration, the drinking water officer may reconsider the matter and may confirm, vary or reverse the initial decision.

(4) If a review is requested,

(a) the review is to be conducted by the Provincial health officer or a medical health officer designated by the Provincial health officer,

(b) the review is to be a review based on the record,

(c) the person conducting the review may require the applicant to give notice of the review in accordance with the person's directions, and

(d) the person conducting the review may

(i) confirm, vary or reverse the initial decision, or

(ii) refer the matter back to the drinking water officer, with or without directions.

Inspection authority

40 (1) For the purposes of this Act, a drinking water officer or issuing official may enter on or into any property and conduct an inspection and, in relation to this, has the same authority as a medical health officer under section 61 [inspection authority] of the Health Act.

(2) The authority under subsection (1) must not be used to enter a private dwelling except with the consent of the occupant or as authorized by a warrant under this or another Act.

Entry warrant

41 If satisfied by evidence on oath or affirmation that access on or into property is necessary for the purposes of this Act, a justice may issue a warrant authorizing a person named in the warrant to enter on or into property and conduct an inspection, undertake hazard abatement or prevention activities or take other action as authorized by the warrant.

Court order requiring compliance

42 (1) On application by a drinking water officer, the Supreme Court may grant an injunction against a person who has contravened this Act, the regulations or an order under this Act,

(a) restraining the person from contravening the Act, regulations or order, or

(b) requiring the person to take action as directed by the court for the purpose of achieving compliance or remedying or preventing a drinking water health hazard.

(2) An order under subsection (1) does not prevent the imposition of a penalty in respect of an offence in relation to the same matter.

Personal liability protection

43 (1) No action for damages lies or may be brought against a drinking water officer, delegate or issuing official because of anything done or omitted

(a) in the performance or intended performance of any duty under this Act, or

(b) in the exercise or intended exercise of any power under this Act,

unless the person was acting in bad faith.

(2) Subsection (1) does not absolve a person from vicarious liability arising out of an act or omission of a person referred to in that subsection for which the first person would be vicariously liable if this section were not in force.

Prohibition against providing false information or obstructing officials

44 A person must not

(a) provide false or misleading information when required by or under this Act to provide information, or

(b) hinder, obstruct, impede or otherwise interfere with a drinking water officer, delegate or issuing official in the performance of their duties or the exercise of their powers under this Act.

Offences and penalties

45 (1) A person who contravenes this Act, or a regulation, order, direction or permit under this Act, commits an offence.

(2) Unless a lower penalty is specified by regulation, a person who commits an offence under subsection (1) is liable on conviction to the following:

(a) in the case of an offence that is not a continuing offence, a fine of not more than $200 000 or imprisonment for not longer than 12 months, or both;

(b) in the case of a continuing offence, a fine of not more than $200 000 for each day the offence is continued or imprisonment for not longer than 12 months, or both.

(3) Section 104.1 [additional sentencing authority] of the Health Act applies in relation to offences under this Act.

(4) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the commission of the offence commits an offence.

(5) Subsection (4) applies whether or not the corporation is prosecuted for the offence.

(6) The time limit for laying an information respecting an offence under this Act is 2 years after the facts on which the information is based first came to the knowledge of a drinking water officer.

Service of documents

46 Section 114 of the Health Act applies in relation to the service of documents under this Act.

Area descriptions

47 Where this Act or the regulations authorize or require the description or designation of an area, this may be by any delineation of the area that adequately describes it including, for example, name, map, plan, legal description, reference to a stream, reference to an aquifer or other geological formation or part of one, depth or other dimension, or by any combination of methods.

General regulation making authority

48 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) The Lieutenant Governor in Council may make regulations respecting

(a) matters that are referred to in a provision of this Act as being subject to the regulations or as having to be in accordance with the regulations, or

(b) any other matter for which regulations are contemplated by this Act.

(3) Without limiting subsection (1) or (2), the Lieutenant Governor in Council may make regulations as follows:

(a) respecting water quality standards, including

(i) standards that are requirements for potable water,

(ii) standards for which monitoring must be conducted and reported,

(iii) standards for which immediate reporting is required if the standards are not met, and

(iv) standards for any other purpose established by regulation;

(b) respecting guidelines for drinking water quality that must be considered in determining what standards to establish in an operating permit and in reviewing the results of analyses required by or under this Act;

(c) respecting the issuance, amendment, renewal, suspension or cancellation of permits under this Act;

(d) establishing requirements and restrictions respecting the construction, alteration, repair, maintenance, installation, operation and monitoring of domestic water systems;

(e) respecting water treatment requirements;

(f) respecting the preparation, retention and publication of records;

(g) respecting fees for applications, permits and services provided under this Act;

(h) requiring persons to provide notice to the public in accordance with the regulations if water provided by a domestic water system is not or may not be potable;

(h.1) restricting who may request reconsiderations or reviews under section 39.1 (reconsiderations and reviews of drinking water officer decisions), restricting what decisions may be reconsidered or reviewed and establishing procedures, time limits, fees, evidentiary rules and other matters respecting such reconsiderations and reviews; and

~~(i) providing for reviews or appeals of orders and other decisions under this Act;~~
(i) providing for reconsiderations, reviews or appeals of orders and other decisions under this Act, other than those referred to in section 39.1, including restricting who may request them and establishing procedures, time limits, fees, evidentiary rules and other matters respecting them;

(j) respecting the sharing of costs for a joint assessment ordered under section 19 (2) [drinking water officer authority in relation to assessments];

(k) respecting testing required for the purposes of section 73 [water analyses for new or altered wells] of the Water Act;

(l) providing for any other matter that the Lieutenant Governor in Council considers advisable in relation to the protection of drinking water.

Authority in relation to regulations

49 (1) In making a regulation under this Act, the Lieutenant Governor in Council or minister may do one or more of the following:

(a) make different provisions for different areas as specified in the regulation;

(b) make different regulations for different classes of persons, places, activities, conditions or things as specified in the regulation;

(c) make different regulations for different persons, places, activities, conditions or things;

(d) provide or provide for exemptions and waivers from otherwise applicable provisions of this Act or the regulations;

(e) delegate a matter to a person;

(f) confer a discretion on a person;

(g) establish criteria that a person must use in exercising a discretionary power conferred under this Act or the regulations, which apply in addition to any other criteria established by or under this Act.

(2) A regulation under this Act establishing a standard, code or rule may do so by adopting a standard, code or rule

(a) published by a national or international standards association, or

(b) enacted as or under a law of another jurisdiction, including a foreign jurisdiction.

(3) A standard, code or rule referred to in subsection (2)

(a) may be adopted in whole, in part or with any changes considered appropriate, and

(b) may be adopted as it stands at a specific date, as it stands at the time of adoption or as amended from time to time.